

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

In re:

USA GYMNASTICS,<sup>1</sup>

Debtor.

Chapter 11

Case No. 18-09108-RLM-11

**DECLARATION OF ALEX E. CUNNY IN SUPPORT OF SURVIVORS'  
OBJECTION TO THE UNITED STATES OLYMPIC AND PARALYMPIC  
COMMITTEE'S MOTION FOR PROTECTIVE ORDER AND TO LIMIT DISCOVERY  
REGARDING DEBTOR'S MOTION FOR ORDER APPROVING THE DISCLOSURE  
STATEMENT AND PLAN CONFIRMATION PROCEDURES**

I, ALEX E. CUNNY, ESQ., hereby declare:

1. I am an attorney duly licensed to practice law in the State of California and have been admitted *pro hac vice* in the United States Bankruptcy Court for the Southern District of Indiana. I am an attorney with Manly, Stewart & Finaldi, attorneys for Simone Biles, Alexandra Raisman, Kyla Ross, Jordyn Wieber, McKayla Maroney, Rachael Denhollander, Jessica Thomashow and approximately 140 additional survivors (hereinafter, the "Survivors"). I am personally familiar with the facts of this case and the contents of this Declaration, and if called upon, could and would competently testify as to its contents.

2. This declaration is made in support of the Survivors' Objection to the United States Olympic and Paralympic Committee's (the "USOPC") Motion for Protective Order and to Limit Discovery Regarding Debtor's Motion for Order Approving the Disclosure Statement and Plan Confirmation Procedures.

3. Subsequent to service of the nine (9) deposition notices, on May 29, 2020, counsel for USOPC, Mr. Mitchell Kamin, agreed to accept service on behalf of Mr. Susanne Lyons, Mr. Lawrence Probst, Ms. Morane Kerek, Ms. Sarah Hirshalnd, and Mr. Rick Adams.

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<sup>1</sup> The last four digits of the Debtor's federal tax identification number are 7871. The location of the Debtor's principal office is 130 E. Washington Street, Suite 700, Indianapolis, Indiana 46204.

4. Pursuant to Local Rule, B-9016-1, the remaining four (4) subpoenas for Mr. Marshal, Mr. Blackmun, Dr. Moreau, and Mr. Ashley were held for 7 days after service of the Notice, before being sent for service upon the witnesses. To date, my office has confirmed service of Mr. Blackmun and Dr. Moreau, though we are still attempting service on Mr. Marshall and Mr. Ashley.

5. On June 3, 2020, counsel for the USOPC initiated a brief telephone conference with undersigned counsel, seeking to have the subpoenas withdrawn. No informal resolution was reached, and the subpoenas were not withdrawn.

6. On June 5, 2020, counsel for the USOPC contacted the Court to set an informal discovery conference, which proceeded on Monday June 8, 2020 at 1:30 p.m. EDT. That informal discovery conference proceeded on Monday June 8, 2020.

7. Mr. Probst was deposed in the pre-Petition California cases, on October 26, 2018. However, and as delineated in the excerpts of depositions provided herewith (Exhibit “17”), counsel for USOPC refused to allow Mr. Probst to answer numerous questions on the grounds that they exceeded the jurisdictional scope of the deposition.

8. Ms. Susanne Lyons was not deposed, in any capacity (whether merits-based or jurisdictional discovery) in the pre-Petition discovery for the California cases that my firm was involved in. Moreover, Ms. Lyons was not served, personally, with document production requests in the pre-petition California cases.

9. Mr. Alan Ashley was not deposed, in any capacity (whether merits-based or jurisdictional discovery) in the pre-Petition discovery for the California cases that my firm was involved in. Moreover, Mr. Ashley was not served with document production requests in the pre-petition California cases.

10. The deposition of Dr. Moreau proceeded on September 13, 2018 in the California Cases, but again, was limited by instructions from counsel not to answer questions related to liability, which were followed by the witness. This is evidenced by the numerous excerpts of Dr. Moreau being instructed not to answer questions on jurisdictional grounds, which have been

attached to this declaration in Exhibit “30.”

11. In the California Cases, my office had issued a subpoena for Mr. Blackmun’s deposition appearance. However, due to personal health issues with Mr. Blackmun, his deposition was delayed and ultimately never taken in those cases. Moreover, my office did not depose Ms. Lyons, or Mr. Ashley, and did not have documents produced from those individuals in the pre-petition California cases. Additionally, USOPC had produced documents in the California cases, though many of the discovery responses (as seen in Exhibit “36”) contained jurisdictional discovery objections, that continued to be an issue between the parties.

12. Subsequent to the filing of Motions to Quash for Lack of Personal Jurisdiction by USA Gymnastics (the “USAG”) in California state court cases (prior to USOPC being a named defendant and removing numerous actions to Federal Court), discovery proceeded against USAG, though USAG raised various objections on the basis of discovery being limited to jurisdiction. In litigating those issues, my office sought relief from the Court in filing motions for further deposition responses from several of USAG’s employees, in light of instructions not to answer on “jurisdictional” grounds.

13. To my knowledge, the first depositions taken in a California state court case involving Larry Nassar, by my office, was in May of 2017. As to USAG’s employees, the depositions were largely limited to jurisdictional inquiries, for which there was motion practice as to the limits of that discovery, as discussed *supra*. There were other defendants (such as gym owners; *e.g.* Ms. Galina Marinova and Mr. Artur Akopyan) who had appeared in some of the actions, who had given “merits-based” discovery, though USAG had been instructing numerous of its employees not to answer what its attorneys deemed to be merits-based questions.

14. After Dr. Moreau’s deposition, my office was in the process of meeting-and-conferring with USOPC as to instructions not to answer questions. A letter brief had not been filed, as to these issues, at the time the Petition was filed in this matter.

15. In light of Mr. Marshall’s deposition occurring on November 20, 2018, my office was not able to meet-and-confer (and subsequently file a Letter Brief) prior to the filing of the

petition in this matter.

16. In addition to representing claimants who are Nassar survivors from California, my office also represents non-Nassar sexual abuse survivor claimants, as well as Nassar survivors from Michigan.

17. Attached as Exhibit “1” is a true and correct copy of a document entitled “USOC Code of Conduct Effective September 23, 2016” which was retrieved from the following website on June 10, 2020:

<https://www.teamusa.org/-/media/Legal/USOC-Code-of-Conduct.pdf?la=en&hash=B4FBCEE5C4CEEAFE2FEECC80476B921F04161C6>.

18. Attached as Exhibit “2” is a true and correct copy of e-mail correspondence from Mr. Mark Chen, counsel to USOPC, to Mr. Alex Cunny on October 29, 2018.

19. Attached as Exhibit “3” is a true and correct copy of the Notice of Taking Deposition of Ms. Susanne Lyons, with attached subpoena and request for documents to be produced.

20. Attached as Exhibit “4” is a true and correct copy of the Notice of Taking Deposition of Dr. William “Bill” Moreau, with attached subpoena and request for documents to be produced.

21. Attached as Exhibit “5” is a true and correct copy of the Notice of Taking Deposition of Mr. Scott Blackmun, with attached subpoena and request for documents to be produced.

22. Attached as Exhibit “6” is a true and correct copy of the Notice of Taking Deposition of Mr. Alan Ashley, with attached subpoena and request for documents to be produced.

23. Attached as Exhibit “7” is a true and correct copy of the Notice of Taking Deposition of Mr. Frank Marshall, with attached subpoena and request for documents to be produced.

24. Attached as Exhibit “8” is a true and correct copy of the Notice of Taking Deposition of Mr. Lawrence “Larry” Probst, with attached subpoena and request for documents to

be produced.

25. Attached as Exhibit “9” is a true and correct copy of the Notice of Taking Deposition of Ms. Morane Kerek, with attached subpoena and request for documents to be produced.

26. Attached as Exhibit “10” is a true and correct copy of the Notice of Taking Deposition of Ms. Sarah Hirshland, with attached subpoena and request for documents to be produced.

27. Attached as Exhibit “11” is a true and correct copy of the Notice of Taking Deposition of Mr. Richard “Rick” Adams, with attached subpoena and request for documents to be produced.

28. Attached as Exhibit “12” is a true and correct copy of a NBC News Article entitled: “*U.S. Olympic Committee CEO Scott Blackmun resigns after Nassar furor*”, and dated February 28, 2018. This article was retrieved on June 13, 2020 from the following website:

<https://www.nbcnews.com/news/us-news/u-s-olympic-committee-ceo-scott-blackmun-resigns-after-nassar-n852031>

29. Attached as Exhibit “13” is a true and correct copy of an October 11, 1999 Letter sent from former president of USAG, Robert Colarossi, to Mr. Blackmun, Mr. Bill Hybl and Mr. Dick Schultz.

30. Attached as Exhibit “14” is a true and correct copy of February 28, 2018 Indianapolis Star Article entitled, “*Scott Blackmun resigns as CEO of the United States Olympic Committee*”, retrieved from the following website on June 12, 2020:

<https://www.indystar.com/story/news/2018/02/28/scott-blackmun-resigns-ceo-united-states-olympic-committee-larry-nassar-usa-gymnastics-sexual-abuse/382610002/>

31. Attached as Exhibit “15” is a true and correct copy of excerpts from the Ropes & Gray Investigation Report released on December 10, 2018, entitled *Report of the Independent Investigation: The Constellation of Factors Underlying Larry Nassar’s Abuse of Athletes*. This report was retrieved on June 12, 2020 from the following website:

<https://www.nassarinvestigation.com/en>

32. Attached as Exhibit “16” are true and correct copy of the report of the Stotz and Friedberg Investigation Summary Report, appended to the Ropes & Gray Report. This report was retrieved on June 12, 2020 from the following website:

<https://www.nassarinvestigation.com/en>

33. Attached as Exhibit “17” are true and correct copy of excerpts from the Deposition of Lawrence “Larry” Probst, taken on October 26, 2018.

34. Attached as Exhibit “18” is a true and correct copy of a USOPC Website Statement entitled *U.S. Olympic Committee announces formation of SafeSport Working Group*, dated July 30, 2013. This article was retrieved on June 10, 2020 from the following website:

<https://www.teamusa.org/media/news/usopc/US-Olympic-Committee-announces-formation-of-SafeSport-Working-Group>

35. Attached as Exhibit “19” is a true and correct copy of the complaint in *Raisman v. United States Olympic Committee, et al.* (Northern District of California, Case No. 5:18-cv-02479). This matter was removed from the California Superior Court, County of Santa Clara.

36. Attached as Exhibit “20” is a true and correct copy of a USOPC webpage that provides background on its Board Members. In particular, this webpage concerns Ms. Susanne Lyons, the Chairperson of the Board. This webpage was retrieved on June 11, 2020 from the following website:

<https://www.teamusa.org/About-the-USOPC/Leadership/Board-of-Directors/Susanne-Lyons>

37. Attached as Exhibit “21” is a true and correct copy of the May 23, 2018 Written Statement of Susanne Lyons, before the Subcommittee on Oversight and Investigations Committee on Energy and Commerce, U.S. House of Representatives. This document was retrieved on June 12, 2020 from the following website:

<https://docs.house.gov/meetings/IF/IF02/20180523/108356/HHRG-115-IF02-Wstate-LyonsS-20180523.PDF>

38. Attached as Exhibit “22” is a true and correct copy of a webpage from the website

“Leaders in Sport” pertaining to Alan Ashley. This webpage was accessed on June 11, 2020 at the following web address:

<https://leadersinsport.com/people/alan-ashley-united-states-olympic-committee/>

39. Attached as Exhibit “23” is a true and correct copy of an NBC Sports website article, entitled: “USOC fires official as Larry Nassar report released”. This webpage was accessed and retrieved on June 11, 2020 at the following web address:

<https://olympics.nbcsports.com/2018/12/10/larry-nassar-alan-ashley-gymnastics-sexual-abuse-usoc/>

40. Attached as Exhibit “24” is a true and correct copy of excerpts from the Deposition of Richard “Rick” Adams, that proceeded on September 12, 2018.

41. Attached as Exhibit “25” is a true and correct copy of the March 28, 2017 written statement provided by Rick Adams to the Committee on the Judiciary, United States Senate. This document was accessed and retrieved on June 11, 2020 from the following website:

<https://www.judiciary.senate.gov/download/03-28-17-adams-testimony>

42. Attached as Exhibit “26” is a true and correct copy of the criminal indictment of Steve Penny in Walker County, State of Texas.

43. Attached as Exhibit “27” is a true and correct copy of excerpts from the Deposition of Frank Marshall, that proceed on November 20, 2018.

44. Attached as Exhibit “28” is a true and correct copy of the United States Center for SafeSport (the “USCSS”) website that lists its board members. This webpage was accessed and retrieved on June 11, 2020 at the following web address:

<https://uscenterforsafesport.org/about/board-of-directors/>

45. Attached as Exhibit “29” is a true and correct copy of the Statement of Frank Marshall, provided at the July 16, 2003 Hearing Before the Subcommittee on Commerce, Trade, and Consumer Protection of the Committee on Energy and Commerce, House of Representatives. This portion of the transcript (only Mr. Marshall’s portion) was accessed and retrieved on June 11, 2020 from the following web address:

<https://www.govinfo.gov/content/pkg/CHRG-108hhrg88430/html/CHRG-108hhrg88430.htm>

46. Attached as Exhibit “30” is a true and correct copy of excerpts from the Deposition of Dr. William “Bill” Moreau, that proceeded on September 13, 2018.

47. Attached as Exhibit “31” is a true and correct copy of the complaint for damages filed on behalf of Dr. Moreau, short titled *Dr. William Moreau v. United States Olympic and Paralympic Committee*. According to the document, this was submitted to the District Court, City and County of Denver, in Colorado, on February 5, 2020.

48. Attached as Exhibit “32” is a true and correct copy of the September 10, 2018 letter from counsel of USOPC to my office, regarding the deposition of Dr. William Moreau. This letter was attached to the deposition transcript of Dr. Moreau as Exhibit “1”.

49. Attached as Exhibit “33” is a true and correct copy of the September 10, 2018 letter from counsel of USOPC to my office, regarding the deposition of Mr. Rick Adams. This letter was attached to the deposition transcript of Mr. Adams as Exhibit “1” by counsel for USOPC.

50. Attached as Exhibit “34” is a true and correct copy of the October 25, 2018 letter from counsel of USOPC to my office, regarding the deposition of Mr. Lawrence Probst. This letter was attached to the deposition transcript of Mr. Probst as Exhibit “26” by counsel for USOPC.

51. Attached as Exhibit “35” is a true and correct copy of the June 8, 2020 Informal Discovery Conference Hearing transcript, with relevant portions underlined.

52. Attached as Exhibit “36” is a true and correct copy of the Defendant USOPC’s Supplemental Response to Request for Production, Set Three, in the *Raisman v. USOC* matter.

53. Attached as Exhibit “37” is a true and correct copy of the initial Motion to Quash filed by USAG in 2017, in the *Jane LM Doe v. USA Gymnastics, et al.* matter (Central District of California, Case No. 8:18-cv-01117; removed from California Superior Court, County of Los Angeles.) Moreover, USAG had filed similar motions to quash in other pending California cases.

54. Attached as Exhibit “38” is a true and correct copy of the July 25, 2018 e-mail from Mr. Daniel White, an attorney who represented USAG, indicating that USAG was withdrawing its Motion to Quash for Lack of Personal Jurisdiction (in that instance, for the *Jane JD Doe v. Doe 1*,

*et al.* matter (subsequently, Central District of California, Case No. 8:18-cv-1135).

55. Attached as Exhibit “39” is a true and correct copy of the Order of the Honorable Magistrate Karen E. Scott, of the Central District Court of California, on August 8, 2018, denying the USOPC’s *ex parte* application for Protective Order regarding discovery.

56. Attached as Exhibit “40” is a true and correct copy of the Joint Letter brief that was submitted in the *Raisman v. USOC, et al.* matter (Northern District of California, Case No. 5:18-cv-02479; Dkt. No. 88 in that matter), with respect to disputes on the deposition of Mr. Rick Adams in that action.

57. Attached as Exhibit “41” is a true and correct copy of the Joint Letter brief that was submitted by my office and the attorneys representing Ropes & Gray, pursuant to a subpoena served on Ropes & Gray in the *Raisman v. USOC, et al.* matter (Northern District of California, Case No. 5:18-cv-02479; Dkt. No. 95, filed on November 8, 2018).

58. Attached as Exhibit “42” is a true and correct copy of the USOPC’s Letter Brief to the Court, regarding the Ropes & Gray subpoena in *Raisman v. USOC, et al.* matter (Northern District of California, Case No. 5:18-cv-02479; Dkt. No. 97, filed on November 12, 2018.)

59. Attached as Exhibit “43” is a true and correct copy of the operative complaint in the *Jane JD Doe, v. Doe 1, et al.* matter (subsequently, Central District Court of California Case No. Case No. 8:18-cv-1135, after removal).

I hereby declare under penalty of perjury under 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 14th day of June, 2020, at Mission Viejo, California.

By: /s/ Alex E. Cunny  
ALEX E. CUNNY, Esq.

**CERTIFICATE OF SERVICE**

I hereby certify that on June 14, 2020, a copy of the foregoing *Declaration of Alex E. Cunny in Support of Survivors Objection to the United States Olympic and Paralympic Committee's (the "USOPC") Motion for Protective Order and to Limit Discovery Regarding Debtor's Motion for Order Approving the Disclosure Statement and Plan Confirmation Procedures* was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on June 14, 2020, a copy of the foregoing *Declaration of Alex E. Cunny in Support of Survivors Objection to the United States Olympic and Paralympic Committee's (the "USOPC") Motion for Protective Order and to Limit Discovery Regarding Debtor's Motion for Order Approving the Disclosure Statement and Plan Confirmation Procedures* was served via electronic mail to the following:

**United States Olympic Committee:** Chris McCleary at Chris.McCleary@usoc.org  
**The Alexander, a Dolce Hotel and Wyndham Hotel Group, LLC:** Daniel M. Eliades at daniel.eliades@klgates.com and David S. Catuogno at david.catuogno@klgates.com

/s/ Alex E. Cunny  
Alex E. Cunny